

# STATE OF NEW YORK

706--A

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. L. ROSENTHAL, DINOWITZ, EPSTEIN, SIMON, GLICK, GALEF, J. RIVERA, McMAHON, GOTTFRIED, FRONTUS, ABINANTI, COLTON, WEPRIN -- read once and referred to the Committee on Housing -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the multiple dwelling law, in relation to the use of electronic or computerized entry systems and the information that may be gathered from such systems

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The multiple dwelling law is amended by adding a new  
2 section 50-b to read as follows:

3 § 50-b. Electronic or computerized entry systems. 1. Entry. a. Where a  
4 landlord installs or plans to install an electronic or computerized  
5 entry system on any entrance from the street, passageway, court, yard,  
6 cellar, or other common area of a class A multiple dwelling, such system  
7 shall not rely solely on a web-based application to facilitate entrance  
8 but shall also include a key fob or key card for tenant use.

9 b. Landlords may provide various methods of entry into individual  
10 apartments including a mechanical key or an electronic or computerized  
11 entry system of a key fob or key card, provided, however that such elec-  
12 tronic or computerized entry system shall not rely solely on a web-based  
13 application.

14 c. Notwithstanding paragraph a or b of this subdivision, landlords  
15 shall provide a mechanical key where requested by the tenant due to a  
16 religious preference.

17 d. All lawful tenants and occupants shall be provided with a key, key  
18 fob or key card at no cost to such tenants. The term "occupants" shall  
19 include children under the age of eighteen who shall be issued a key,  
20 key fob or key card if a parent or guardian requests such child be

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD00549-02-1

1 provided with one. Tenants may also receive up to four additional keys,  
2 key fobs or key cards at no cost to the tenant for employees or guests.  
3 The term "guests" shall include family members and friends who can  
4 reasonably be expected to visit on a regular basis or visit as needed to  
5 care for the tenant or the apartment if the tenant is away. Employees,  
6 including contractors, professional caregivers or other services provid-  
7 ers, may have an expiration date placed on their key, key card or key  
8 fob, which may be extended upon the tenant's or occupant's request.  
9 Tenants may request a new or replacement key, key fob or key card at any  
10 time throughout the course of the tenancy. The landlord or his or her  
11 agent shall provide the first replacement key, key fob or key card to  
12 the tenant free of charge. The cost of second and subsequent replacement  
13 cards shall not be more than what the landlord paid for the replacement  
14 up to and not exceeding twenty-five dollars.

15 e. The landlord shall not set limits on the number of keys, key fobs  
16 or key cards a lawful tenant or occupant may request.

17 f. Any door that has an electronic or computerized entry system shall  
18 have backup battery power to ensure that the entry system continues to  
19 operate during a power outage. A landlord, or his or her agent, shall  
20 routinely inspect the backup battery power and shall replace according  
21 to system specifications. Owners or their agents shall provide lawful  
22 tenants and occupants with information about whom to contact in the  
23 event that the tenant, occupant or the tenant's or occupant's children,  
24 guests or employees become locked out.

25 2. Notice. Landlords or their agents shall provide notice to a tenant  
26 at the time the tenant signs the lease, or when the electronic or  
27 computerized entry system is installed, of the provisions of subdivision  
28 one of this section.

29 3. Data collection. a. If an electronic and/or computerized entry  
30 system is utilized to gain entrance to a class A multiple dwelling, the  
31 only information gathered by any electronic and/or computerized entry  
32 system shall be limited to the lessee or tenant's name and apartment  
33 number, and the preferred method of contact for such lessee or tenant.  
34 For electronic and computerized entry systems that rely on the  
35 collection of biometric data and which have already been installed at  
36 the time this section shall have become law, a biometric identifier may  
37 be collected pursuant to this section in order to register a lessee or  
38 tenant for an electronic and/or computerized entry system. No new elec-  
39 tronic and/or computerized entry systems that rely on the collection of  
40 biometric data shall be installed in class A multiple dwellings for  
41 three years after the effective date of this section.

42 (i) The owner of the multiple dwelling may collect only the minimum  
43 data required by the technology used in the electronic and/or computer-  
44 ized entry system to effectuate such entrance and protect the privacy of  
45 such tenants.

46 (ii) The owner or agent of the owner shall not request or retain, in  
47 any form, the social security number of any tenant or occupant as a  
48 condition of use of the electronic or computerized entry system.

49 (iii) The owner or agent of the owner may record each time a key, key  
50 card or key fob is used to enter the building, but shall not record any  
51 departures.

52 (iv) A copy of such data may be retained for reference at the point of  
53 authentication by the electronic and/or computerized entry system. Such  
54 reference data may be retained only for tenants or those authorized by  
55 the tenant.

1 (v) The owner of the multiple dwelling shall destroy the electronic,  
2 physical, and/or computerized data collected, except for reference data,  
3 within a reasonable time, but not later than thirty days after the date  
4 collected.

5 (vi) Reference data for a tenant or those authorized by a tenant shall  
6 be destroyed within thirty days of (1) the tenant permanently vacating  
7 the dwelling, or (2) a request by the tenant to withdraw authorization  
8 for those previously authorized by the tenant.

9 b. (i) For the purposes of this section, "biometric identifier" means  
10 a retina or iris scan, fingerprint, voiceprint, or record of hand, face  
11 geometry or other similar feature.

12 (ii) An entity may not capture a biometric identifier of an individual  
13 to gain entrance to a class A multiple dwelling unless the person is a  
14 tenant or person authorized by the tenant, and informs the individual  
15 before capturing the biometric identifier; and receives their express  
16 consent to capture the biometric identifier.

17 (iii) Any entity that possesses a biometric identifier of an individ-  
18 ual that is captured to gain entrance to a class A multiple dwelling:

19 (1) May not sell, lease or otherwise disclose the biometric identifier  
20 to another person unless pursuant to a grand jury subpoena or court  
21 ordered warrant, subpoena, or other authorized court ordered process.

22 (2) Shall store, transmit and protect from disclosure the biometric  
23 identifier using reasonable care and in a manner that is the same as or  
24 more protective than the manner in which the person stores, transmits  
25 and protects confidential information the person possesses; and

26 (3) Shall destroy the biometric identifier within a reasonable time,  
27 but not later than forty-eight hours after the date collected, except  
28 for reference data. If any prohibited information is collected, such as  
29 the likeness of a minor or a non-tenant, the information shall be  
30 destroyed immediately.

31 c. The owner of the multiple dwelling, or the managing agent, must  
32 develop written procedures which describe the process used to add  
33 persons authorized by the tenant to electronic and/or computerized entry  
34 systems on a temporary or permanent basis, such as visitors, children,  
35 their employees, and caregivers to such building.

36 (i) The procedures must clearly establish the owner's retention sched-  
37 ule and guidelines for permanently destroying the data collected.

38 (ii) The procedures cannot limit time or place of entrance by such  
39 people authorized by the tenant.

40 4. Prohibitions. a. No form of location tracking, including but not  
41 limited to satellite location based services, shall be included in any  
42 equipment, key, or software provided to tenants or guests as part of an  
43 electronic and/or computerized entry system.

44 b. It shall be prohibited to collect through an electronic and/or  
45 computerized entry system the likeness of a minor occupant, information  
46 on the relationship status of tenants, lessees and/or guests, the  
47 frequency of the use of the electronic and/or computerized entry system  
48 by a lessee, tenant or guest, or the frequency, time and use of guest  
49 access codes.

50 c. Information that is acquired via the use of an electronic and/or  
51 computerized entry system shall not be used for any purposes other than  
52 monitoring building entrances and shall not be used as the basis or  
53 support for an action to evict a lessee or tenant, or an administrative  
54 hearing seeking a change in regulatory coverage for an individual or  
55 unit. However, a tenant may authorize their information to be used by a  
56 third party, but such a request must clearly state who will have access

1 to such information, for what purpose it will be used, and the privacy  
2 policies which will protect their information. Under no circumstances  
3 may a lease or a renewal be contingent upon authorizing such use. Elec-  
4 tronic and/or computerized systems may use third-party services to the  
5 extent required to maintain and operate system infrastructure, including  
6 cloud-based hosting and storage. The provider or providers of third-par-  
7 ty infrastructure services must meet or exceed the privacy protections  
8 set forth in this section and will be subject to the same liability for  
9 breach of any of the requirements of this section.

10 d. Information and data collected shall not be made available to any  
11 third party, unless authorized as described above, including but not  
12 limited to law enforcement, except upon a grand jury subpoena or a court  
13 ordered warrant, subpoena, or other authorized court ordered process.

14 5. Storage of information. Any information or data collected shall be  
15 stored in a secure manner to prevent unauthorized access by both employ-  
16 ees and contractors and those unaffiliated with the landlord or their  
17 agents, except as otherwise provided in this section. Future or continu-  
18 ing tenancy shall not be conditioned upon consenting to the use of an  
19 electronic and/or computerized entry system.

20 6. Software issues. Whenever a company that produces, makes available  
21 or installs electronic or computerized entry systems discovers privacy  
22 concerns or other vulnerability in their software, such company shall  
23 notify customers of such vulnerability within a reasonable time of  
24 discovery but no later than twenty-four hours after discovery and shall  
25 update the software and take any other action as may be necessary to  
26 repair the vulnerability within a reasonable time, but not longer than  
27 thirty days after discovery. Smart access systems and vendors shall  
28 implement and maintain reasonable security procedures and practices  
29 appropriate to the nature of the information collected. In the event  
30 that a security vulnerability that pertains to the embedded software or  
31 firmware on the smart access systems is discovered, smart access systems  
32 and their vendors shall:

33 a. be able to create updates to the firmware to correct the vulner-  
34 abilities;

35 b. contractually commit to customers that the smart access system or  
36 vendor will create updates to the embedded software or firmware to reme-  
37 dy the vulnerabilities; and

38 c. make such security-related software or firmware updates available  
39 for free to customers for the duration of the contract between smart  
40 access buildings and smart access systems.

41 7. Waiver of rights; void. Any agreement by a lessee or tenant of a  
42 dwelling waiving or modifying his or her rights as set forth in this  
43 section shall be void as contrary to public policy.

44 8. Penalties. (a) A person who violates this section is subject to a  
45 civil penalty of not more than five thousand dollars for each violation.  
46 The attorney general may bring an action to recover the civil penalty.  
47 An individual injured by a violation of this section may bring an action  
48 to recover damages. A court may also award attorneys' fees to a prevail-  
49 ing plaintiff.

50 (b) Where a landlord or his or her agent uses an electronic or comput-  
51 erized entry system to harass or otherwise deprive a tenant of any  
52 rights available under law, such landlord or agent shall be subject to a  
53 civil penalty of ten thousand dollars for each violation.

54 (c) For purposes of this subdivision, each day the violation occurs  
55 shall be considered a separate violation.

1     9. Rent regulated dwellings. Installation of an electronic or comput-  
2     erized entry system pursuant to this section in a rent regulated dwell-  
3     ing shall constitute a modification of services requiring the landlord  
4     of such dwelling or his or her agent to apply to the division of housing  
5     and community renewal for approval before performing such installation.  
6     Such installation shall not qualify as a basis for rent reduction.

7     10. Exemptions. a. Nothing herein shall apply to multiple dwellings  
8     owned or managed by an entity subject to 42 U.S.C. § 1437 et seq., or  
9     any of its subsidiaries.

10    b. Nothing in this section shall limit the authority of the division  
11    of housing and community renewal to impose additional requirements  
12    regarding electronic or computerized entry systems installed in multiple  
13    dwellings for which the division is required to approve substitutions or  
14    modifications of services.

15    § 2. Severability. If any provision of this act, or any application of  
16    any provision of this act, is held to be invalid, that shall not affect  
17    the validity or effectiveness of any other provision of this act, or of  
18    any other application of any provision of this act, which can be given  
19    effect without that provision or application; and to that end, the  
20    provisions and applications of this act are severable.

21    § 3. This act shall take effect immediately.